

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

DONOVANN HALL

v.

CORRECTIONAL OFFICER  
ANDY GREGOIRE

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C.A. No. 17-228S

**REPORT AND RECOMMENDATION**

Lincoln D. Almond, United States Magistrate Judge

Plaintiff Donovan Hall has filed a civil rights Complaint (ECF Doc. No. 1) in this Court pursuant to 42 U.S.C. § 1983, alleging “verbal sexual harassment.” (ECF Doc. No. 1-1 at p. 2). He has also filed an Application to Proceed without Prepayment of Fees and Affidavit (ECF Doc. No. 2) (“Application”). In connection with proceedings in forma pauperis, the Court is required to screen the Complaint pursuant to 28 U.S.C. §§ 1915(e)(2)<sup>1</sup> and 1915A.<sup>2</sup> Having done so, the Court concludes that Plaintiff has failed to state a claim on which relief may be granted by this Court.

**I. Overview**

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<sup>1</sup> Section 1915(e)(2) states:

- (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--
- (A) the allegation of poverty is untrue; or
  - (B) the action or appeal--
    - (i) is frivolous or malicious;
    - (ii) fails to state a claim on which relief may be granted; or
    - (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2).

<sup>2</sup> Similarly, § 1915A provides in relevant part:

- (a) Screening -- The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) Grounds for dismissal -- On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--
  - (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
  - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. 1915A.

Mr. Hall is currently incarcerated at the Adult Correctional Institutions (“ACI”) in Cranston, Rhode Island. In brief, he alleges that Correctional Officer Gregoire came to his cell door while he was on the toilet and “claimed” to other inmates that he caught Plaintiff masturbating. He asserts that C/O Gregoire laughed with other inmates and made a joke out of the situation that has been going on “for months.” He contends that inmates still use the name given to him by C/O Gregoire, i.e., “Small Hall,” and that Gregoire used his pinky finger to demonstrate the size of Plaintiff’s penis. Plaintiff alleges that this has caused him “a lot of stress” and is “not fair.” He alleges that he is being laughed at and made fun of because of what C/O Gregoire started.

Plaintiff indicates that he brought this matter to the attention of Chief Inspector Robert Cuttaw by letter and that C/O Gregoire was “removed from post.” (ECF Doc. No. 1 at p. 2). Mr. Hall seeks compensatory and punitive damages totaling \$800,000.00 as well as a Court Order terminating C/O Gregoire’s employment and an out-of-state transfer to a state prison in either New Hampshire or Norfolk Medium Security in Massachusetts.

## **II. Law**

### **A. Screening under § 1915(e)(2) and § 1915A**

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2) and § 1915A is identical to the standard used when ruling on a Rule 12(b)(6) motion. Chase v. Chafee, No. CA 11-586ML, 2011 WL 6826504, at \*2 (D.R.I. Dec. 9, 2011). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)); see also Fed. R. Civ. P. 12(b)(6). Although detailed factual allegations are not required, factual allegations must be enough to raise a right to relief above the speculative level. Twombly, 550 U.S. at 555. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678. When a complaint pleads

facts that are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and plausibility of entitlement to relief.” Id. (quoting Twombly, 550 U.S. at 557 (internal quotation marks omitted); see also Ocasio-Hernandez v. Fortuno-Burnet, 640 F.3d 1, 12 (1<sup>st</sup> Cir. 2011) (quoting Iqbal)).

In making this determination, the Court must accept a plaintiff’s well-pled allegations as true and construe them in the light most favorable to him. Chase, 2011 WL 6826504, at \*2. Although the Court must review pleadings of a pro se plaintiff liberally, Estelle v. Gamble, 429 U.S. 97, 106 (1976), the Court need not credit bald assertions or unverifiable conclusions, Iqbal, 556 U.S. at 678. Nor is the Court “bound to accept as true a legal conclusion couched as a factual allegation.” Id. Moreover, the tenet that the court is required to accept all of the (well-pled) allegations contained in a complaint is inapplicable to legal conclusions. Id.

#### **B. Legal Standard under § 1983**

“Section 1983 creates a remedy for violation of federal rights committed by persons acting under color of state law.” Sanchez v. Pereira-Castillo, 590 F.3d 31, 40 (1<sup>st</sup> Cir. 2009) (internal quotation marks omitted). In order to maintain a § 1983<sup>3</sup> action, a plaintiff must allege sufficient facts to show that he has a plausible entitlement to relief. Iqbal, 556 U.S. at 678. Section 1983 requires three elements for liability: deprivation of a right, a causal connection between the actor and the deprivation and state action. Sanchez, 590 F.3d at 41 (citing 42 U.S.C. § 1983).

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<sup>3</sup> According to § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an action or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

### **III. Discussion**

Mr. Hall's Complaint fails to state any viable federal claims. Plaintiff fails to identify any particular federal constitutional or statutory right allegedly violated by C/O Gregoire and thus fails to state a claim under § 1983. While the behavior complained of by Mr. Hall is, if true, unprofessional, it is not actionable under federal law. See Collins v. C/O Graham, 377 F. Supp. 2d 241, 243-244 (D. Me. 2005) (holding that verbal harassment without physical injury does not give rise to § 1983 liability in the prison context); and Duran v. Duval, No. 96-10482-GAO, 1998 WL 765726 at \*3 (D. Mass. Oct. 28, 1998) ("it is settled that emotional damage by verbal harassment does not amount to an infringement of a constitutional right, and thus is not actionable under Section 1983").

### **IV. Conclusion**

In short, Mr. Hall has failed to state a claim cognizable in this Court. Accordingly, I recommend that his Complaint be DISMISSED with prejudice and that his Application to Proceed In Forma Pauperis (ECF Doc. No. 2) and Motion for Appointment of Counsel (ECF Doc. No. 3) be DENIED as moot.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
June 1, 2017